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***** IMPORTANT LICENSING INFORMATION *****

FROM: South Carolina Department of Consumer Affairs, Staff Leasing Services

TO: All Staff Leasing Companies/Professional Employer Organizations Licensed in South Carolina

RE: Summary of 2005 Changes in Law Regarding Regulation of Professional Employer Organizations in South Carolina

DATE: July 27, 2005

- The statute governing the licensing of staff leasing companies in South Carolina has been changed. Please read carefully the attached summary of the changes.
- Because the new law refers to your industry as professional employer organizations or services, we have also begun to use that designation on our web page. Please look for Professional Employer Organizations in the Licensing and Regulations link on the Department's home page. The web address is www.sconsumer.gov.
- In order to implement the new law, we are making changes to various application forms and adding some new notification forms. We expect to finalize the form changes shortly. The new forms will be posted on our web page and we will notify in writing every licensed PEO when the forms will be available.
- **The deadline to apply for biannual license renewal is September 30, 2005. Please do not use the old renewal forms currently available on our web page.**
- This memorandum along with the attached summary of changes will be posted on our web page under Professional Employer Organizations.
- If you have any questions, please call Timmie Gibson at (803) 734-4251 or Hana Williamson at (803) 734-4188. We are here to make the transition period smooth and we hope that in the end we will have a more efficient and user-friendly system in place.

SUMMARY OF 2005 CHANGES IN LAW REGARDING REGULATION OF PROFESSIONAL EMPLOYER ORGANIZATIONS IN SOUTH CAROLINA

1. The designation of “staff leasing organization or services” has been changed to “professional employer organization or services”. The change does not alter the definition of the service; it merely reflects the currently preferred designation within the industry.
2. An applicant and any controlling person must have at least two years' experience working directly under the supervision of a current licensee or have two years of other related industry experience as approved by the Department before the initial license is issued. **This provision does not apply to all license holders who filed applications with the Department before September 30, 2005 and to non-resident restricted licenses that may be issued under South Carolina Code Section 40-68-90.**
3. Under revisions to Code Section 40-68-30, a licensee or controlling person is now required to notify the Department within 30 days of any felony conviction or civil judgment.
4. The new law provides for required continuing professional education. Effective for license years beginning after September 30, 2005, key management personnel of all licensees must complete at least eight hours of continuing professional education annually. See new Code Section 40-68-45.

This requirement will have no effect on applications for license renewals that are due September 30, 2005. However, all licensees will have to have their continuing education requirements satisfied by September 30, 2006 (i.e, eight hours of CE between 10/1/05 and 9/30/06). The Department anticipates recognizing courses offered by NAPEO and CAPEO, as well as other outside courses related to employment issues. We also plan to offer our own courses. With respect to courses offered by the Department, we hope to offer them through some form of web-cast so that travel to South Carolina will not be required. We expect to have a program set up by early next year. The Department is working with NAPEO, the PEO roundtable and other interested industry representatives on answering specific issues regarding implementation of the program. We anticipate issuing additional advisories once we have the opportunity to address these issues.

5. The new law allows for alternative licensing of those entities that are certified by an approved national assurance organization such as ESAC. Any exemptions from the current licensing requirements must be addressed in a regulation. **Until such regulation is drafted by the Department and adopted by the South Carolina General Assembly, the Department cannot accept any certification in lieu of regular licensing requirements. Please be advised that in South Carolina, it takes approximately one year to have a regulation adopted.** The licensees and other interested entities will be notified as we go through the process. See new Code Section 40-68-55.

6. Under the new law, whenever a PEO executes an agreement with a client company, a written explanation of the agreement must be personally delivered to each assigned employee **within ten days after executing the agreement.** A PEO had to provide this written explanation under the old law. The amendment merely states the time frame within which the explanation must be provided. Section 40-68-60 (B).
7. Insurance or benefit plans. Code Section 40-68-110 has been changed in several respects. The summary of the changes is shown in bold below.
 - (1) **Prior to enrollment of assigned employees to any insurance or benefit plan, the plan information must be provided to assigned employees. Such information must, at a minimum, include:**
 - (a) the type of coverage;
 - (b) the identity of each insurer for each type of coverage;
 - (c) the amount of benefits provided for each type of coverage and to whom or whose behalf benefits are to be paid;
 - (d) the policy limits on each insurance policy;
 - (e) **other information, such as applicable deductibles or co-payments;**
 - (f) **name and address of the insurance agent or broker responsible for securing the policy of insurance.**
 - (2) **The licensee shall disclose to the Department whether the coverage is fully insured, partially insured, or fully self-funded. This provision does not in any way endorse or approve the sponsoring of partially insured or self-insured benefit plans, as these plans may not be sponsored, offered, endorsed, or otherwise proffered.**
 - (3) **The licensee shall notify the client company and the Department in writing about a discontinuance and replacement of any health or workers' compensation insurance coverage no later than ten business days after the discontinuance and before offering any replacement policy.**
8. Code Section 40-68-120 was amended to further clarify what health benefit plans may be offered by a PEO in South Carolina. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self-insured, self-funded or other plans for health benefits that are not licensed with the South Carolina Department of Insurance. The employee health benefit plans provided by a licensed insurance provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including ERISA.
9. Under the previous version of Section 40-68-120, licensees had to notify within thirty days the South Carolina Employment Security Commission of the start and termination of the licensee's relationship with a client company. The 2005 amendment adds the requirement to notify this Department as well. Simply copying the Department with your letter to the ESC will suffice.

10. Under the previous version of Section 40-68-140(C), a licensee had to notify the Department in writing about a change in the location of its primary business office; the addition of more business offices; or a change in the location of business records. The 2005 amendment added the requirement that the written notification must be received by the Department within ten business days of the above changes.
11. Section 40-68-150 was amended so that a PEO may not offer an employee a self-funded, self-insured or other employee benefit plan not licensed by the South Carolina Department of Insurance, unless the program is maintained by the client company individually for the sole benefit of participating co-employees of the client company.

This provision recognizes the fact that a PEO may enter into a client relationship with a company that already has a benefit plan that a PEO otherwise could not offer. To the extent that the client company wishes to continue the plan it had before it entered into a relationship with a PEO, it may do so.

12. Section 40-68-150 was further amended in that a PEO may not misrepresent that any self-funded, self-insured or unlicensed benefit plans are licensed by the South Carolina Department of Insurance or otherwise in compliance with ERISA.
13. Several new provisions were added to section 40-68-160 dealing with disciplinary actions. In addition to existing grounds for disciplinary action, the Department may now bring a disciplinary action against a person for the following new reasons:
 - (a) knowingly or without sufficient inquiry maintaining, sponsoring, offering, endorsing or otherwise proffering self-insured, self-funded or other employee benefit plans that are not licensed with the South Carolina Department of Insurance;
 - (b) adverse final actions by any state or federal regulatory agency for violations within the scope or control of the licensee;
 - (c) failure to inform the Department in writing within thirty days of an adverse final action by a state or federal regulatory agency.

Upon finding a violation, the Department may now, in addition to existing disciplinary actions, issue a cease and desist order. Upon revocation or suspension of a license, the licensee may not solicit any new clients or enter into additional contracts for professional employer services. In addition to being able to take disciplinary action against a licensee, the Department also may now take action against a person engaging in professional employer services without a license.

14. Under the new law, any person affected by a disciplinary action taken by the Department or by a denial, revocation or suspension of a license may request a hearing before the South Carolina Administrative Law Court. **Hearings are no longer before the Administrator or a hearing officer hired by the Department.**